

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILLIP J. SEILER,

Petitioner,

No. C 04-2911 PJH (PR)

vs.

J. BROWN, Warden,

Respondent.

**ORDER DENYING
RESPONDENT'S MOTION TO
DISMISS; SCHEDULING
ORDER**

This is a habeas case filed pro se by a state prisoner. Petitioner was convicted of murder in 1989 and sentenced to fifteen years to life in prison. In 2003 the Board of Prison Terms found him suitable for parole, but that decision was reversed by the governor. It is the governor's decision that petitioner challenges here.

Respondent has filed a motion to dismiss, petitioner has opposed it and respondent has filed a reply. The motion is ready for decision.

DISCUSSION

Petitioner's grounds for federal habeas relief are that the governor's decision: (1) Violated the plea agreement; (2) violated his rights not to be subjected to an ex post facto law; and (3) was not supported by some evidence.

1. Issue one, plea agreement

Petitioner contends that his plea agreement provided that the parole decision would be made by the parole board, and did not provide for the governor to make the decision, so the governor's denial of parole was a violation of the plea agreement and his constitutional rights. *See Santobello v. New York*, 404 U.S. 257, 262 (1971).

Respondent argues that because the statute providing for review by the governor was in effect in 1989, when the plea agreement was entered into, this claim accrued at that

2. *Issue two, ex post facto*

3. *Issue three, some evidence*

CONCLUSION

IT IS SO ORDERED.

PHYLLIS J. HAMILTON
United States District Judge